



## DEPARTMENT OF THE AIR FORCE AIR EDUCATION AND TRAINING COMMAND

**NOTE:** This document provides information about the law designed to help you safely cope with your own legal needs. But legal information is not the same as legal advice -- the application of law to an individual's specific circumstances. Although we go to great lengths to make sure our information is accurate and useful, we recommend you consult a lawyer if you want professional assurance that our information, and your interpretation of it, is appropriate to your particular situation

### **ADOPTING STEPCHILDREN**

**BOTTOM LINE UP FRONT:** The majority of adoptions in the United States are stepparent adoptions, in which the biological child of one parent is formally adopted by that parent's new spouse. This type of adoption may occur when one biological parent has died or has left the family after a divorce, and the remaining parent remarries. While most stepparents do not formally adopt their stepchildren, if they do, they obtain the same parental rights as biological parents. This Information Paper discusses some of the issues that arise when a stepparent adopts a stepchild.

***Q: My new spouse wants to adopt my son from a previous marriage. Are there special adoption rules for stepparents?***

A: Generally speaking, a stepparent adoption is much easier to complete than a nonrelative adoption. The procedure is generally the same as for any adoption, but specific steps are sometimes waived or streamlined. For instance, waiting periods, home studies and even the adoption hearing are sometimes dispensed with in a stepparent adoption. In all stepparent adoptions, however, your ex-spouse will need to consent to the adoption because she is the other legally recognized parent of the child. If your former spouse refuses to consent, the adoption will not be allowed unless his or her parental rights are terminated for some other reason--abandonment or unfitness, for example.

***Q: My new husband has a great relationship with my 10-year-old son, and wants to adopt him. My son communicates about once or twice a year with his real father, who will consent to the adoption. Is adoption the right thing to do?***

Stepparent adoptions can be complicated when the non-custodial biological parent is still alive and in contact with the child. There may be no legal reason why the adoption cannot take place, but the emotional impact of the adoption also needs to be considered. If an adoption will bring stability to your new family and help your son feel more secure, it may be the right choice. But no matter how well your son gets along with your new husband, he may feel conflicting loyalties between his adoptive father and his real father, and this may be hard for him to handle. Generally speaking, the less contact your son has with his real father, the more sense it makes for an adoption to take place.

Besides the impact on the child (which should be of primary importance), also make sure your ex-husband understands that giving consent to the adoption means giving up all parental rights to his son, including any right to visit him or make decisions for him regarding issues such as medical treatment or education. In addition, he would no longer be responsible for child support once his parental rights were terminated.

***Q: I had my daughter when I was unmarried, and we haven't heard from her father for several years. I'm now married to another man, and he wants to adopt my daughter. Do I have to find her biological father and get his consent to the adoption before it can take place?***

As in any adoption, the adoption cannot take place until the absent parent either gives consent or has his parental rights terminated for some other reason. That being said, there are a few specific ways to proceed with an adoption when one biological parent is out of the picture.

First, it is possible to go forward without a biological parent's consent if you can prove that the absent parent has not exercised any parental rights and convince the court that it's appropriate to legally terminate that parent-child relationship. Most states' laws allow parental rights to be terminated when a parent has willfully failed to support the child or has abandoned the child for a period of time, usually a year. Generally, abandonment means that the absent parent hasn't communicated with the child or supported the child financially.

If the absent parent is a father, another common way to terminate his parental rights is to show that he is not, legally speaking, the presumed father of the child. Most states have statutes establishing who the presumed father of a child is in certain situations. In this case, you won't have to prove that the father has abandoned the child. You simply must show that he does not meet the legal definition of presumed father. For instance, in all states, a man who is married to a woman at the time she gives birth is legally presumed to be the child's father. Another way of establishing presumed fatherhood in

many states is by marrying the mother after the child has been born and being named as the father on the child's birth certificate.

If you can show that the father doesn't meet any of the tests in your state for presumed fatherhood, the court may terminate his rights and allow you to proceed without his consent. If, however, the father meets one of the state's tests for presumed fatherhood, you'll need either to obtain the father's consent to the adoption, or to have his rights terminated by proving abandonment, willful failure to support the child, or parental unfitness.